

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**





ORIGINAL

76-7346

---

United States Court of Appeals  
FOR THE SECOND CIRCUIT

---

MAX LIMITED; NITROVIT LIMITED; JOSEPH  
K LTD.; REASON & BUSBY LTD.; T. D.  
BAILEY LTD.; HUDSON WARD & CO. LTD.;  
BARKER, LEE, SMITH LTD.; WHITTENS LTD.;  
GENERAL FREIGHT CO. LTD., and BOCM SIL-  
COCK LTD.,

*Plaintiffs-Appellants,*

*against*

M.V. "HOLENDRECHT", her engines, boilers, tackle, etc.,

*and against*

N. V. STOOMVAART MAATSCHAPPIJ DE MAAS  
and PHS. VAN OMMEREN, N. V.,

*Defendants-Appellees.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

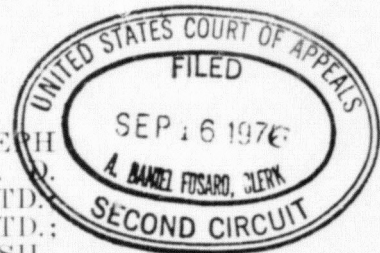
JOINT APPENDIX

---

BIGHAM, ENGLAR, JONES & HOUSTON  
*Attorneys for Plaintiffs-Appellants*  
99 John Street  
New York, New York 10038

KIRLIN, CAMPBELL & KEATING  
*Attorneys for Defendants-Appellees*  
120 Broadway  
New York, New York 10005

---



PAGINATION AS IN ORIGINAL COPY



## INDEX

	PAGE
Docket Entries .....	A1
Summons .....	A3
Complaint .....	A4
Amendment of Complaint .....	A7
Answer .....	A8
Notice of Motion .....	A14
Exhibits—Annexed to Affidavit of Harold V. Higham, in Support of Motion:	
Exhibit A—Berth Term Grain Bill of Lading (148,600 Bushels Corn) .....	A14
Exhibit B—Berth Term Grain Bill of Lading (20,000 Bushels Corn) .....	A16
Exhibit C—Grain Charter Party .....	A18
Memo Endorsed on Motion, Duffy, J. ....	A20

**Docket Entries.**

75 Civ. 3173

Tradax Limited, ETC. ET. AL. VS. N.V. Stoomvaart  
Maatschappij De Maas ETC. ET. AL.

DUFFY, J.

DATE	NR.	PROCEEDINGS
06-30-75	1	Filed complaint. Issued summons.
06-30-75	2	Filed Amendment of complaint to include an additional plttf. (BOCM SILCOCK LTD.)
07-17-75	3	Filed summons and return-served: the following: PHS Van Ommeren Shipping (USA), Inc., by J. Haggard on 07-14-75. Phs Van Ommeren Shipping (USA), Inc., by J. Haggard on 07-14-75.
03-11-76	—	PRE-TRIAL CONFERENCE HELD BY BERNIKOW, U.S. MAG.
05-05-76	(4)	Filed ANSWER of defts. to the complaint.
06-03-76	(5)	Filed plttfs' notice to produce.
06-04-76	(6)	Filed defts' affdvt. and notice of motion for an order staying this lawsuit pending arbitration. Ret. 6-22-76
06-04-76	(7)	Filed memorandum of law in support of the defts. motion to stay this action pending arbitration.
06-17-76	(8)	Filed plttfs' affdvt. of George F. Chandler III, in opposition to defts' motion for an order staying this law suit pending arbitration.



*Docket Entries.*

- 06-23-76 (9) Filed Defts Reply affidavit in support of their motion for an order to stay action pending arbitration by Harold V. Hingham.
- 06-23-76 (10) Filed Pltffs Memorandum of Law in opposition to defts motion to stay the law suit pending arbitration.
- 06-23-76 — Filed memo endorsed on document #6— Motion to stay this cause pending arbitration is granted. The bills of lading specifically incorporated the arbitration provisions of the charter. The argument that the arbitration may be time-barred is to be resolved by the arbitrators. The matter is to be transferred to the suspense docket. It is so ordered—DUFFY, J. (m/n)

**Summons.**

UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

---

TRADAX LIMITED; NITROVIT LIMITED; JOSEPH RANK LTD.;  
REASON & BUSBY LTD.; T. D. BAILEY LTD.; HUDSON WARD  
& CO. LTD.; BARNEEL, LEE, SMITH LTD.; WHITTENS LTD.;  
and GENERAL FREIGHT CO. LTD.,

Plaintiffs

v.

M.V. "HOLENDRECHT", her engines, boilers, tackle, etc.,

—and v.—

N. V. STOOMVAART MAATSCHAPPIJ DE MAAS and  
PHS. VAN OMMEREN, N. V.,

Defendants

---

To the above named Defendants:

You are hereby summoned and required to serve upon Bigham, Englar, Jones & Houston, plaintiff's attorneys, whose address is: 99 John Street, New York, New York 10038 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT  
Clerk of Court.

B. WASSERMAN  
Deputy Clerk.

Date: June 30, 1975.



**Complaint.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

[SAME TITLE]

---

1. This is a case of contract, cargo damage and non-delivery of cargo, civil and maritime, and is an admiralty and maritime claim within the meaning of Rule 9 (h). Plaintiffs invoke the maritime procedures specified in Rule 9 (h).

2. Plaintiffs are all limited liability corporations incorporated under the laws of England with their principal offices in England. Defendants are each foreign corporations incorporated under the laws of the Netherlands, with a principal office in care of PHS Van-Ommersen Shipping (USA), Inc.

3. During all the times herein mentioned defendant N. V. STOOMVAART MAATSCHAPPIJ DE MAAS owned the M. V. "HOLENDRECHT", and defendant PHS. VAN OMMEREN, N. V. owned, managed, and controlled N. V. STOOMVAART MAATSCHAPPIJ DE MAAS, and crewed, managed, and operated the M. V. "HOLENDRECHT" in the common carriage of goods by water for hire between Philadelphia and Hull, England.

4. The M. V. "HOLENDRECHT" is now, or during the pendency of this action will be, within this District.

5. On February 6, 1973, the Tidewater Grain Company delivered 10,715 long tons of Corn to PHS. VAN OMMEREN, N. V. as a common carrier at Philadelphia in good condition, for transportation on the M. V. "HOLENDRECHT" to

*Complaint.*

Hull, England, and delivery to shipper's order in consideration of an agreed freight, and pursuant to the valid terms of on board bills of lading issued by the M. V. "HOLENDRECHT".

6. On March 1, 1973 the M. V. "HOLENDRECHT" arrived at Hull, England and delivered said shipment damaged by salt water.

7. Prior to March 1, 1973 plaintiffs became for value the owners of said shipment and the owners and holders of said bills of lading, and bring this suit on their own behalf and that of all others interested in said shipment.

8. All conditions precedent required of plaintiffs and of all others interested in said shipment have been performed.

9. By reason of the premises, plaintiffs and those on whose behalf this suit is brought have sustained damages in the sum of \$36,000.00, as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

WHEREFORE, plaintiffs pray:

1. That the M. V. "HOLENDRECHT" be arrested;
2. That process issue against defendants, and that defendants be cited to appear and answer the allegations of the complaint;
3. That an interlocutory judgment be entered in favor of the plaintiffs against the M. V. "HOLENDRECHT" and against the defendants directing that plaintiffs recover their damages and that the M. V. "HOLENDRECHT" be condemned and sold and the proceeds of sale applied to the payment to plaintiffs of the sums found due them;



*Complaint.*

4. That the amount due plaintiffs be computed by further proceedings before a Magistrate, pursuant to Rule 53 (b) and/or by further proceedings before the Court, pursuant to Rule 42 (b);

5. That final judgment against defendants and the M. V. "HOLENDRECHT" be entered in favor of the plaintiffs for the amount found due plaintiffs with interests and with costs; and

6. That plaintiffs have such other and further relief as may be just.

BIGHAM, ENGLAR, JONES & HOUSTON,  
Attorneys for Plaintiffs

By DANIEL A. SULLIVAN  
A Member of the Firm

Office and Post Office Address:  
99 John Street  
New York, New York 10038  
Telephone: REctor 2-4646

(Verified.)

**Amendment of Complaint.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

TRADAX LIMITED; NITROVIT LIMITED; JOSEPH RANK LTD.;  
REASON & BUSBY LTD.; T. D. BAILEY LTD.; HUDSON WARD  
& CO. LTD.; BARKER, LEE, SMITH LTD.; WHITTENS LTD.;  
GENERAL FREIGHT CO. LTD.; and BOCM SILCOCK LTD.,

Plaintiffs,

*against*

M.V. "HOLENDRECHT", her engines, boilers, tackle, etc.,

*and against*

N. V. STOOMVAART MAATSCHAPPIJ DE MAAS and  
PHS. VAN OMMEREN, N. V.,

Defendants.

---

Plaintiffs by their attorneys Bigham, Englar, Jones & Houston, hereby amend the complaint to include Boem Silcock Ltd. as an additional plaintiff, in the caption and elsewhere in the pleadings wherever the list of plaintiffs appears.

BIGHAM, ENGLAR, JONES & HOUSTON  
Attorneys for Plaintiffs,

By DANIEL A. SULLIVAN  
A Member of the Firm

Office and Post Office Address:  
99 John Street  
New York, New York 10038  
Telephone: REctor 2-4346



**Answer.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

[S A M E T I T L E]

---

Defendants, N.V. Stoomvaart Maatschappij De Maas and PHS. Van Ommeren, N.V., answering the plaintiffs' complaint alleges on information and belief as follows:

1. They admit that this is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and that it is within the admiralty and maritime jurisdiction of this Honorable Court.

They deny the other allegations contained in paragraph 1 of the complaint.

2. They deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 of the complaint.

3. They admit that at all times hereinafter mentioned they were and are corporations duly organized and existing under and by virtue of the laws of the Kingdom of Holland and that they owned and operated the M.V. HOLENDRECHT in the carriage of merchandise by water for hire between the ports of Philadelphia and Hull, England, among others, and that during the time of the voyage in question, the vessel was on charter to Henry W. Peabody Grain Ltd., under a charter party dated December 14, 1972 and that the said charterer issued a bill of lading dated February 6, 1973, signed by or on behalf of the master, which required that any disputes regarding the condition of the cargo were to be put to arbitration in London. Defendants demand arbitration with plaintiffs pursuant to the plaintiffs' contract.

*Answer.*

They deny the other allegations contained in paragraph 3 of the complaint.

4. They admit that although the M.V. HOLENDRECHT is not presently within the jurisdiction of this Honorable Court, it may become so during the pendency of this action.

5. They admit that on or about February 6, 1973 there was delivered to the M.V. HOLENDRECHT at Philadelphia, a shipment of corn in bulk, in apparent outward good order and condition to be carried to Hull, England, pursuant to the terms and conditions of a bill of lading dated February 6, 1973, issued therefore and accepted by the shippers and/or their agents in consideration of a freight thereupon paid or agreed to be paid.

They deny the other allegations contained in paragraph 5 of the complaint.

6. They admit that thereafter the said vessel arrived at its port of destination where it discharged and delivered the said shipment in the same apparent outward good order and condition as when received pursuant to the aforementioned bill of lading.

They deny the other allegations contained in paragraph 6 of the complaint.

7. They deny they have any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 of the complaint.

8. They deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of the complaint.

9. They admit that a sum of money has been demanded no part of which has been paid.



A10

*Answer.*

They deny the other allegations contained in paragraph 9 of the complaint.

FIRST DEFENSE

10. The complaint fails to state a claim on which relief can be granted.

SECOND DEFENSE

11. Any loss or damage to the goods, as alleged in the complaint, that may have occurred while they were in the possession or custody of the defendants or on board the said vessel arose or resulted from the conditions of the goods when delivered to the defendants, or from wastage in bulk or weight or from inherent defect, quality or vice of the goods, or insufficient packing, insufficient or inadequacy of marks, latent defects not discoverable by due diligence, or by act or omission of the shippers or owners of the goods, their agents or representatives, and the defendants are not under any liability for any such loss or damage.

THIRD DEFENSE

12. (1) Due diligence was used to make the vessel seaworthy and to secure that it properly manned, equipped and supplied, and to make the holds and other parts of the ship in which the goods were carried safe and fit for their reception, carriage and preservation in accordance with the provisions of the United States Carriage of Goods by Sea Act, 1936.

(2) Accordingly, if the goods sustained any loss or damage while they were on board the vessel, due to any unseaworthiness of the vessel, which is denied, defendants are not under liability therefor.

A11

*Answer.*

FOURTH DEFENSE

13. If any loss or damage to the goods as alleged in the complaint occurred while they were in the possession or custody of the defendants, or on board the said vessel, which is denied, and if it be held that such loss or damage was due to an act of God, perils, dangers or accidents of the sea or other navigable waters, or latent defects not discoverable by due diligence, the defendants are not under any liability for any such loss or damage.

FIFTH DEFENSE

14. If any loss or damage to the goods, as alleged in the complaint, occurred while they were on board the said vessel, which is denied, and if it be held that the loss or damage arose or resulted from the act, neglect or default of the Master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the vessel, the defendants are not under any liability for any such loss or damage.

SIXTH DEFENSE

15. Any loss or damage to the goods, as alleged in the complaint, which may have occurred while they were in the defendants' possession or custody or on board the said vessel, arose without the defendants' actual fault or privity and without the fault or neglect of its agents or servants or anyone for whom it was responsible except insofar as such loss or damage resulted from negligence or errors in the navigation or management of the vessel, and the defendants are not under any liability for any such loss.

SEVENTH DEFENSE

16. The goods were received, loaded and pursuant to the terms and conditions of a certain aforesaid bill of lad-



*Answer.*

ing, which was issued to and accepted by the shipper and which constituted the contract of carriage and which will be produced at trial. If it be proved at the trial that the alleged loss or damage arose or resulted from a cause for which the defendants are not liable under any of the provisions of the aforementioned bill of lading and/or the United States Carriage of Goods by Sea Act, 1936, the defendants will claim the benefit thereof and be relieved of any liability with respect to plaintiff's claim. The defendants reserves the right to amend this Answer, if need be, as facts may develop or may be proved.

## EIGHTH DEFENSE

17. If plaintiff should be entitled to any recovery, which is denied, such recovery must be computed in accordance with the terms of the bills of lading and/or provisions of the United States Carriage of Goods by Sea Act, 1936, and can in no event exceed \$500 per package or per customary freight unit.

WHEREFORE, the defendant prays that the complaint be dismissed and that it has such other, further and different relief as this Court may deem just and proper.

Dated: New York, New York  
May 4, 1976

KIRLIN, CAMPBELL & KEATING

By: (ILLEGIBLE)

A Member of the Firm

Attorneys for Defendant

Office & P.O. Address

120 Broadway

New York, New York 10005

(212) 732-5520

A13

*Answer.*

To:

BIGHAM, ENGLAR, JONES &  
HOUSTON

Attorneys for Plaintiffs

Office & P. O. Address

99 John Street

New York, New York 10038



**Notice of Motion.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---

[S A M E T I T L E]

---

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Harold V. Higham, and the prior pleadings and proceedings heretofor had herein, the defendants will move this court before the Honorable Kevin T. Duffy, one of the Judges of this Court, in room 1602 of the United States District Court for the Southern District of New York, at Foley Square, New York, New York, on Tuesday the 22nd day of June, 1976, for an order pursuant to Section 3 of the Federal Arbitration Act, Title 9 U.S.C., staying this lawsuit as between plaintiffs and defendants pending arbitration pursuant to the aforementioned Act and the bills of lading and charter party entered into between said parties controlling the subject matter of this action.

\* \* \*

---

**Exhibit A, Annexed to Affidavit of Harold V. Higham,  
in Support of Motion.**

Berth Term Grain Bill of Lading  
(148,600. 00/56 Bushels Corn)

(Photoprints)

(For convenience of Court and Counsel this Exhibit is  
bound in on the opposite page)



BALTIMORE FORM C  
BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by TIDEWATER GRAIN COMPANY  
on board the good motor vessel called the HOLENDRECHT (Dutch Flag)  
now lying in the Port of PHILADELPHIA and bound for AS PER CHARTER PARTY  
viz: ONE HUNDRED & FORTY EIGHT THOUSAND SIX HUNDRED AND 00/56 (148,600.00/56)  
BUSHELS CORN

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of AS ORDERED  
SHIPPER'S ORDER; NOTIFY HENRY W. PEABODY  
GRAIN LIMITED, LONDON  
(the dangers of the Seas only excepted), unto

or to his or their Assigns, he or they paying freight for the said goods at the rate of AS PER CHARTER PARTY

QUANTITY, DESCRIPTION AND STOWAGE

148,600.00/56 BUSHELS CORN 8,321,600 POUNDS

STOWED IN BULK IN NOS. 1, 3 AND 5 CENTER HOLDS AND IN NOS. 2, 3 AND  
4 PORT AND STARBOARD SIDE TANKS

GOODS LOADED ON BOARD FEBRUARY 6th, 1973

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED  
LONDON DECEMBER 18th, 1972 TO BE CONSIDERED AS FULLY INCORPORATED HEREIN

COPY

NON-NEGOTIABLE

"United States law prohibits shipment of these commodities to the Soviet Union, Communist China, North Korea, Cuba, Iraq, Iran, Communist controlled areas of Viet Nam and Laos or Cuba, Southern Rhodesia, unless otherwise authorized by the United States."

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April 16, 1924, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.
2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortages and/or damage if any incurred.
3. Shipper's weight, quantity and quality unknown.
4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the seas or other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraint of princes, rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, by collisions, stranding or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or Manager).
5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed, also sufficient security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common safety, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to  
and date; one of which being accomplished, the others to stand void.

PHILADELPHIA, FEBRUARY 6th, 1973

Dated at

THREE Bills of Lading, all of this tenor  
LAVINO SHIPPING COMPANY (See over)

BEST COPY AVAILABLE

Set No. As agents for the MASTER

12



Original Bill of Lading produced  
by - *Cornwall Wharfedale Co. Ltd.*  
*Hues*

For J. R. RIX & SONS LTD.

*Obituary*

6. New Jason Clause: Where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:—"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

"If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."

7. New Both to Blame Collision Clause: If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried here under will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represent loss of, or damage to, or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier. The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

8. If discharged in the United Kingdom cargo to be received at destination at the average rate of 1000 tons per weather working day, Sundays and Holidays excepted, for Cereals, and at the average rate of 750 tons per weather working day, Sundays and Holidays excepted, for Flour, but receivers of the cargo are in no case obliged to take delivery at night without their consent. Time counting from notice of readiness whether in berth or not.

If vessel discharges on the Continent, conditions as per charter party or addendum, if any, to apply.

9. Charterers to have the liberty of ordering vessel to discharge at a second wharf or berth if required, cost of shifting including bunker coal used to be for charterers account and time occupied in shifting to count.

10. All terms, conditions and provisions of the Strike, Lighterage Clause No. 26 and Arbitration Clause of the 'Centrocon' charter-party to apply.

11. Vessel to have the privilege of fueling en route for this and subsequent voyage.

#### WAR RISKS CLAUSE

1. "No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charter Party as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

2. "The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or by any Government or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done the same shall not be deemed a deviation and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly."

#### F and I BUNKERING CLAUSE

"The vessel in addition to all other liberties shall have liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever whether such ports are on or off the direct and/or customary route or routes to the ports of loading or discharge named in the Charter and there take oil bunkers in any quantity in the discretion of owners even to the full capacity of fuel tanks, deep tanks and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage."

A15



## BERTH TERM GRAIN BILL OF LADING

**SHIPPED**, in apparent good order and condition, by

TIDEWATER GRAIN COMPANY

on board the good motor vessel called the

**HOLENDRECHT (Dutch Flag)**

now lying in the Port of PHILADELPHIA

and bound for AS PER CHARTER PARTY

TWENTY THOUSAND AND 00/56 (20,000.00/56) BUSHELS CORN

viz:

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of AS ORDERED

(the dangers of the Seas only excepted), unto

SHIPPER'S ORDER; NOTIFY HENRY W. PEABODY  
GRAIN LIMITED, LONDON

or to his or their Assigns, he or they paying freight for the said goods at the rate of

AS PER CHARTER PARTY

**QUANTITY, DESCRIPTION AND STOWAGE**

20,000.00/56 BUSHELS CORN

1,120,000 POUNDS

STOWED IN BULK IN NOS. 1,3 AND 5 CENTER HOLDS AND IN NOS. 2,3 AND 4 PORT AND STARBOARD SIDE TANKS

GOODS LOADED ON BOARD FEBRUARY 6th, 1973

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED 15 TH  
DECEMBER 18TH, 1972 TO BE CONSIDERED AS FULLY INCORPORATED HEREIN

"United States law prohibits the distribution of these publications to the Soviet Union, mainland China, North Korea, Russia, Hong Kong, Communist controlled areas of Viet Nam and Laos or Cuba, Southern Rhodesia, unless otherwise authorized by the United States."

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

2. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the seas or other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraint of Princes, rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, stranding or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or Manager).

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be properly assumed, also sufficient security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects worthy and have her properly equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from some cause existing at the time of shipment or in the management of the steamer, or from latent defect in the steamer, her machinery or equipment, which may be attributable to the exercise of due diligence, the consignee or owners of the cargo shall, nevertheless pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to and date; one of which being accomplished, the others to stand void.

THREE

Bills of Lading, all of this tenor

(See over)

PHILADELPHIA. FEBRUARY 6th. 1973

Dated at

LAVINO SHIPPING COMPANY

Set No. 4 As agents for member

Original Bill of Lading produced  
by - General Freight Co. Inc.  
Hues.

For J. R. RIX & SONS LTD.

*D. Chisano*

6. New Jason Clause: Where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply: "In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods."

"If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."

7. New Both to Blame Collision Clause: If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried here under will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represent loss of, or damage to, or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier. The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

8. If discharged in the United Kingdom cargo to be received at destination at the average rate of 1000 tons per weather working day, Sundays and Holidays excepted, for Flour, but receivers of the cargo are in no case obliged to take delivery of cereals, and at the average rate of 750 tons per weather working day, Sundays and Holidays excepted, for Flour, but receivers of the cargo are in no case obliged to take delivery at night without their consent. Time counting from notice of readiness whether in berth or not.

9. Charterers to have the liberty of ordering vessel to discharge at a second wharf or berth if required, cost of shifting including bunker coal used to be for charterers account and time occupied in shifting to count.

10. All terms, conditions and provisions of the Strike, Lighterage Clause No. 26 and Arbitration Clause of the 'Centrocon' charter-party to apply.

11. Vessel to have the privilege of fueling en route for this and subsequent voyage.

#### WAR RISKS CLAUSE

1. "No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charter Party as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered."

2. "The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or by any Government or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly."

#### P and I BUNKERING CLAUSE

"The vessel in addition to all other liberties shall have liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever whether such ports are on or off the direct and/or customary route or routes to the ports of loading or discharge named in the Charter and there take oil bunkers in any quantity in the discretion of owners even to the full capacity of fuel tanks, deep tanks and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage."



A17

A18

**Exhibit C, Annexed to Affidavit of Harold V. Higham,  
in Support of Motion.**

Grain Charter Party

(Photoprints)

(For convenience of Court and Counsel this Exhibit is  
bound in on the opposite page)



LONDON, 11th December 1972

It is this day Mutually Agreed,

BETWEEN INDOY U. PERSIAN CHAIN LIMITED[illegible]

That the said Steamship being light, staunch and strong, and in every way fitted for the voyage, ~~with liberty to receive cargo~~  
shall with all convenient speed sail and proceed to Vizcaya Harbor, P.R.

and there load, always afloat, from said Charterers or their agents, a full and complete cargo subject to limits above guaranteed of WHEAT and/or INDIAN CORN and/or RYE and/or ~~barley~~ <sup>oats</sup> And, on receipt at destination, the full conversions if ~~received by the~~ <sup>shipped as per</sup>

~~the bill of lading shall be taken up by the charterers or their agents, who shall be responsible for the same.~~

[illegible]

1. 1/2 ports out of AMORTY or PREP or CLAY or WILL or THOMP GRAY THERMAL or 1 1/2's port.

*one part only*, as ordered on signing Bills of Lading, and deliver the same agreeable to Bills of Lading, on being paid freight *as per clause 1st* enclosed, as follows: *for each container*

[illegible]

FA.00 (Four Pounds) British Sterling per ton of 2240 lbs. or 1016 kilos if vessel discharges at one port.

14.25 (Four) Pounds twenty five New Pence) British Sterling; per ton of 2240 lbs. or 1016 kilos. 15

and tried to find out  
the way to the

N.C.D. & U.S.D.A. Grain Inspectors' Weevil Free Certificate

or Local Agents

Captain to call at Charterers Office as requested, and sign Bills of Lading as presented, without prejudice to this Charter Party, and deliver up the original copy of this Charter Party to the Charterers Office as requested.

Charterers to be liable according to both terms, with customary berth dispatch and if detained longer than five days, Sundays and holidays excepted Charterers to pay demurrage.

Notification of the Vessel's readiness must be delivered at the office of the Charterers or their agents, at or before 4 P.M. for at or before 12 M.

time for loading if required by Charterers, not to commence before the 20th day of August.

or their agents at their office before said hour, the Charterers or their agents shall call on the Surveyor as ready for cargo at her loading port before 12 o'clock noon on the day of the loading, followed by the presentation of said Surveyor's pass to the Charterers.

It is also mutually agreed that this contract shall be completed and be superseded by the signing of Bills of Lading on the receipt of regular line steamers from loading port to each of their destinations.

port, this contract shall be superseded by the signing of Bills of Lading in the form customary for such voyages for grain cargoes, which Bills of Lading shall however contain the following clauses:—

It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the seas or other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrest and by collisions, stranding or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariner, or other servants of the shipowner, not resulting, however, in any case, from want of due diligence by the owners or the shipowner of them, or by the Ship's Husband or Manager).

General Average shall be payable according to York/Antwerp Rules, as amended, in effect in London, and the Charterparty shall be deemed to contain a clause obligating the Charterer to provide sufficient security to be given as required by master or agents. If the owner shall be a vessel duly licensed to make the Steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the consignees or owners of the cargo shall, nevertheless pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect, or unseaworthiness.

Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled, 'An Act Relating to Navigation'.

notwithstanding, but receivers of the cargo are in no case obliged to take delivery at night without their consent, and in any event the steamer must

6 "Vessel to have a \_\_\_\_\_ [redacted] to have the permission of \_\_\_\_\_ [redacted] looking up \_\_\_\_\_ [redacted]

Charterers' liability under this Charter to cease on cargo being shipped.

to have the privilege of transferring this Charter to others (guaranteeing in the shipowner the due fulfilment

As the investigation proceeds, the following information is being furnished to the Bureau:

Enclaves 7/21 are attached to reply.

Authority of Management

For S.T.M. GRAY LIMITED

4. Does not contain signature and \_\_\_\_\_

\_\_\_\_\_

Agents Only.

\_\_\_\_\_



7. Vessel is to be discharged at the average rate of 3,000 tons per weather working day of 24 consecutive hours, Sundays and Holidays excepted (see also Clause 9) failing which Charterers' are to pay demurrage as per Clause 10. If sooner despatched Owners are to pay despatch money as per clause 10.
8. Cargo is to be received at destination, free of expense to the vessel, time counting from 7 a.m. on the next business day following receipt at or before 4 p.m. (or at or before 12 noon if on Saturday) of the Master's notice of the readiness to discharge vessel also having been entered at Custom House, whether in berth or not. Time at second port if used to count from vessel's arrival whether in berth or not.
9. R.F.C. SATURDAY CLAUSE:
  1. Notwithstanding any custom of the port to the contrary, Saturday shall not count as laytime at loading and discharging port or ports where stevedoring labour and/or grain handling facilities are unavailable on Saturday or available only at overtime and/or premium rates.
  2. In ports where only part of Saturday is affected by such conditions as described under "1" above, laytime shall count until the expiration of the last straight time period.
  3. Where six or more hours of work are performed at normal rates, Saturday shall count as a full layday.
10. At loading and discharging port Charterers' to pay demurrage, if incurred at the rate of \$3,000 (Three thousand dollars) per day or pro rata for part of a day for all time used in excess of allowed laytime. Owners to pay despatch money at the rate of \$1,500 (One thousand five hundred dollars) per day or pro rata for part of a day for all laytime saved in loading and discharging.
11. Overtime always to be for Charterers' account but if ordered by Master to be for Owners' account. Officers' and Crew's overtime always to be for Owners account.
12. Owners to appoint Agents at loading and discharging port. Charterers' to appoint Stevedores at loading port. Charterers to appoint Stevedores at discharging port.
13. Charterers have the option of loading the vessel at a second safe berth at loading port the cost of shifting including bunker fuel used to be for Charterers' account and time occupied in shifting to count.

14. Freight is to be paid in London, within 7 days of receipt of telegraphic advice of signing Bills of Lading, discountless and non-returnable vessel and/or cargo lost or not lost.
15. Vessel to be left in seaworthy trim to shift between discharging ports.
16. At TIENTSIN, should discharging berth be unavailable on vessel's arrival, time is to count from 7 a.m. on the next working day after notice of arrival at the anchorage to which the vessel has been ordered has been given to Charterers or their Agents during ordinary office hours but time from declaration that discharging berth is available until vessel is on berth not to count.
17. At AVONMOUTH or GLASGOW or HULL, should no suitable berth be available on arrival and vessel has to wait at Walton Bay or Tail of the Bank or Spurn Head, time is to count from 7 a.m. on the next working day after notice of arrival at anchorage at Walton Bay or Tail of the Bank or Spurn Head respectively has been given to Charterers or their Agents during ordinary office hours, whether passed by Customs or not, but time used in shifting from anchorage to discharging berth not to count.
18. Any trimming required in vessel's wing tanks to be for Owners' account and time not to count. Any extra discharging expenses and loss of laytime by reason of vessel's wing tanks not bleeding entirely into main holds to be for Owners' account.
19. The word "steamer" wherever used in this Charter is understood to mean "motor vessel".
20. War Risk Clauses, New Jason and Poth to Flame Collision Clause, U.S.A. Clause Paramount, Strike Clause No.30(Amended) and Arbitration Clause No.39 of the Centrocon Charter Party, P. 1. Bunkering Clause as attached are deemed to be fully incorporated in this Charter Party.
21. All other terms, conditions and exceptions of the Charter Party remaining unaltered.



**WAR RISKS  
CLAUSE**

"(1.) No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or after be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

"(2.) The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or by any other Government or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfilment of the contract voyage and the freight shall be payable accordingly."

Printed and Sold by S. Straker & Sons Ltd., 49 Fenchurch Street, London, E.C.3.

**I. BOTH TO BLAME COLLISION CLAUSE**

If the liability for any collision in which the vessel is involved while performing this Charter Party falls to be determined in accordance with the laws of the United States of America, the following clause shall apply :-

**BOTH TO BLAME COLLISION CLAUSE**

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact."

and the charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same clause.

**II. GENERAL AVERAGE AND THE NEW JASON CLAUSE**

General Average shall be payable according to the York/Antwerp Rules, 1950, but where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply :-

**NEW JASON CLAUSE**

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."

and the charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same clause.

S. STRAKER & SONS LTD., 49 Fenchurch Street, E.C.3.



#### "CENTROCON" STRIKE CLAUSE (AMENDED)

If the cargo cannot be loaded by reason of Riots, Civil Commotions or of a Strike or lock-out of any class of workmen, essential to the loading of the cargo, or by reason of obstructions or stoppages beyond the control of the Charterers caused by riots, civil commotions or a strike or lock-out on the Railways, or in Docks or other loading places, or if the cargo cannot be discharged by reason of Riots, Civil Commotions, or if a Strike or Lock-out of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes, provided that a Strike or Lock-out of the Shippers' and/or Receivers' men shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labour at rates current before the Strike or Lock-out. In case of any delay by reason of the before mentioned causes, no claim for damages or demurrage shall be made by the Charterers, Receivers of the cargo, or Owners of the steamer. For the purposes, however, of settling despatch rebate account, any time lost by the steamer through any of the above causes shall be counted as time used in loading or discharging as the case may be.

#### "CENTROCON" ARBITRATION CLAUSE

All disputes from time to time arising out of this contract, shall, unless the parties agree forthwith on a single arbitrator, be referred to the final arbitrament of two arbitrators carrying on business in London who shall be Members of the Baltic and engaged in the Shipping and/or Grain Trades, one to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. Any claim must be made in writing and Claimant's Arbitrator appointed within three months of final discharge, and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his acting be taken before the award is made.

#### P. & I. CLUB OIL BUNKER CLAUSE

The vessel shall have liberty as part of the contract voyage to proceed to any port or ports at which bunker oil is available for the purpose of bunkering at any stage of the voyage whatsoever and whether such ports are on or off the direct and/or customary route or routes between any of the ports of loading or discharge named in this Charter and may there take oil bunkers in any quantity in the discretion of Owners even to the full capacity of fuel tanks and deep tanks and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage.

#### U.S.A. CLAUSE PARAMOUNT

This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16th, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

A19



**Memo Endorsed on Motion, Duffy, J.**

Motion to stay this cause pending arbitration is granted. The bills of lading specifically incorporated the arbitration provisions of the charter. The argument that the arbitration may be time-barred is to be resolved by the arbitrators.

The matter is to be transferred to the Suspense Docket. It is so ordered.

KEVIN THOMAS DUFFY  
USDJ

New York, N. Y.  
June 22, 1976



**COPY RECEIVED**

Sep 15 1976

KIRLIN, CAMPBELL & KEATING

Due and timely service of *Two* copies  
of the within *APPENDIX* is hereby  
admitted this *15TH* day of *SEPTEMBER* 197*6*

.....  
Attorneys for *APPELLEES*